

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WILBURN SHAWN CROWELL,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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)  
) **NOT FOR PUBLICATION**  
)

) **No. RE 2013-0672**  
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)  
) **FILED**  
) **IN COURT OF CRIMINAL APPEALS**  
) **STATE OF OKLAHOMA**

)  
)  
) **APR 18 2014**

**SUMMARY OPINION**

**LUMPKIN, JUDGE:**

**MICHAEL S. RICHIE**  
**CLERK**

Appellant, Wilburn Shawn Crowell, pled *nolo contendere* on January 26, 2010, in Hughes County District Court Case No. CF-2009-112 to Assault and Battery-Domestic Abuse. He was given a two year suspended sentence, with rules and conditions of probation. The State filed an application to revoke Appellant's suspended sentence on April 22, 2010. Appellant confessed the application to revoke on October 14, 2011, and was "re-sentenced" on October 25, 2011, to a two year suspended sentence, "under supervision of Community Sentencing Program and defendant to follow all recommendations of LSI."

The State filed a subsequent application to revoke Appellant's suspended sentence on January 8, 2013, and an amended application to revoke on February 1, 2013. Following a revocation hearing on July 10, 2013, the Honorable B. Gordon Allen, Associate District Judge, found, by a preponderance of the evidence, that Appellant violated the terms of his probation and revoked Appellant's two year suspended sentence. Appellant appeals from the revocation of his suspended sentence.

On appeal Appellant raises five propositions of error:

1. The trial court lacked jurisdiction to revoke Mr. Crowell's original two-year suspension that expired nearly a year before the State filed the January 8, 2013, application to revoke.
2. The trial court lacked authority to impose post-imprisonment supervision upon revocation of Mr. Crowell's January 26, 2010, conviction and sentence.
3. Alternatively, counsel's failure to advocate on his client's behalf and preserve issues for review was the result of the ineffective assistance of counsel
4. In the event the revocation stands, the written order revoking must be corrected to comport with the record showing Mr. Crowell was adjudged guilty and sentenced on January 26, 2010.
5. Cumulative errors deprived Mr. Crowell of a fair proceeding and a reliable outcome.

In the State's Answer Brief filed in this Court February 21, 2014, the State agrees that Appellant's suspended sentence expired on January 26, 2012, two years after the sentence was entered on January 26, 2010, and that the trial court did not have jurisdiction to revoke it based upon the State's January 8, 2013, application. We agree. As set forth by the State:

"The court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it." 22 O.S.Supp.2012, § 991b(D). In applying this statute, this Court has found that "while the trial court, during the term of the original judgment and sentence, could have revoked the suspended sentence in whole or in part, up to five years, it was without authority to order additional suspended time past the term of the original judgment and sentence." *Roberson v. State*, 1977 OK R 74, ¶ 4, 560 P.2d 1039, 1040. This Court has also stated that "a defendant's suspended sentence may not be lengthened by intervening revocation orders occurring within the original term of the sentence ..." *Hemphill v. State*, 1998 OK CR 7, ¶ 9, 954 P.2d 148, 151. "The original term of sentence is that which is set by the district court at the time the order suspending was first entered." *Id.*

The State agrees that the trial court's order of revocation should be reversed with instructions to dismiss. As we find Appellant is entitled to relief on his first proposition of error, the remaining propositions of error are moot.

**DECISION**

The revocation of Appellant's suspended sentence in Hughes County District Court Case No. CF-2009-112 is **REVERSED** and the matter is **REMANDED** to the District Court with instructions to dismiss. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2014), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**REVOCATION APPEAL FROM THE DISTRICT COURT OF HUGHES COUNTY, THE HONORABLE B. GORDON ALLEN, ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT REVOCATION PROCEEDING**

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**OPINION BY: LUMPKIN, J.**

LEWIS, P.J.: CONCUR  
SMITH, V.P.J.: CONCUR  
C.JOHNSON, J.: CONCUR  
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